

SENATE BILL 2500
By Dixon

AN ACT to amend Tennessee Code Annotated, Title 12, Title 47
and Title 68, relative to electronic waste.

WHEREAS, many electronic devices contain hazardous materials, such as lead and mercury, that may pose particular threats to public health and the environment if improperly handled or discarded; and

WHEREAS, electronic waste represents one of the fastest growing and hazardous components of the waste stream; and

WHEREAS, according to the United States Environmental Protection Agency, more than 4.3 million tons of appliances and consumer electronics were discarded in 1999; and

WHEREAS, a study for the National Safety Council projected that three-fourths ($\frac{3}{4}$) of all computers ever purchased in the United States remain stockpiled in storerooms, attics, garages, or basements; and

WHEREAS, it is estimated that only a small percentage of obsolete computers are currently recovered for recycling; and

WHEREAS, the high technology sector represents a vital and growing part of the state's economy; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 211, is amended by adding the following as a new, appropriately designated part:

§ 68-211-1101.

This part shall be known and may be cited as the "Tennessee Electronic Waste Recycling Act."

§ 68-211-1102.

As used in this part, unless the context otherwise requires:

- (1) "Department" means the department of environment and conservation;
- (2) "Electronic device" means computer equipment, including, but not limited to, personal computers, computer monitors, central processing units, printers, scanners, and any other computer peripherals containing heavy metals or hazardous materials;
- (3) "Electronic waste" means unwanted, obsolete, or unusable electronic devices;
- (4) "Fund" means the electronic waste recycling fund created by this part;
- (5) "Manufacturer" means:
- (A) A person who manufactures an electronic device sold in the state; or
 - (B) A person who sells an electronic device in this state under such person's brand name;
- (6) "Not-for-profit organization" means an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (7) "Retailer" means a person who sells electronic devices in the state to consumers, but who did not manufacture the devices. "Retailer" includes a manufacturer of an electronic device who sells the electronic device directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a retailer; and
- (8) "Retail sale" or "sell at retail" means any transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, from a retailer to a consumer. "Retail sale" does not include a wholesale transaction with a retailer. "Retail sale" does not include the sale or transfer of used electronic devices by a not-for-profit organization.

§ 68-211-1103.

It is the intention of the general assembly to reduce the number of improperly disposed electronic devices by providing incentives to increase the number of collection facilities for electronic devices. It is the purpose of this part to provide for:

(1) The establishment and maintenance of electronic device collection facilities and programs that support electronic waste recycling;

(2) The development of management standards for electronic waste recyclers; and

(3) The promotion of educational programs to encourage the public to dispose of electronic waste properly.

§ 68-211-1104.

(a) There is established a general fund reserve to be allocated by the general appropriations act which shall be known as the "electronic waste recycling fund." Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this part, and shall not revert to the general fund on any June 30. Any excess revenues or interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years. All fees, civil penalties, and fines collected pursuant to this part shall be deposited in the fund.

(b) The department may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this part. Any such monetary gifts, grants or donations shall be deposited in the fund.

§ 68-211-1105.

The fund may be used as follows:

(1) The department may award grants to develop and implement educational programs to encourage proper handling, disposal and recycling of electronic waste.

(2) The department shall establish and maintain a directory of recyclers of electronic waste and a toll-free telephone number for the purpose of disseminating information concerning the locations and operating hours of electronic recycling facilities within the state, and information concerning the availability, dates and requirements for collection.

(3) The department may award grants to develop and implement programs to provide direct incentives to for-profit and not-for-profit entities to establish and operate recycling facilities that:

(A) Collect or process used electronic devices for recycling purposes;

(B) Reuse or resell electronic devices or components of electronic devices; or

(C) Extract and use, or sell for reuse, raw materials from electronic devices.

(4) The department may hire personnel necessary to implement the provisions of this part and expend moneys in the fund for other necessary administrative costs; provided, that only direct costs of administration and implementation of this part shall be expended from the fund and only that portion of salaries and benefits of personnel which are directly utilized to implement and administer the provisions of this part shall be expended from the fund.

§ 68-211-1106.

(a) In awarding grants under this part, the department shall consider:

(1) The quantity of used electronic devices that will be diverted from landfills;

(2) The estimated cost per device of the collection, processing, reuse, or sale proposed;

(3) The availability of, and potential for, markets for recycled materials;

(4) The degree to which the proposal mitigates or avoids harmful environmental or health effects;

(5) The degree to which the proposal employs innovative recycling technologies; and

(6) The demonstrated history of the grant applicant in disposing of or providing for the reuse of electronic devices in an environmentally sound and responsible manner without violation of any federal or state law or regulation.

(b) A for-profit or not-for-profit entity shall be eligible for a grant or incentive under this part only if the for-profit or not-for-profit entity warrants to the department that it will carry out the grant purposes in a manner that complies with all applicable federal and state laws and regulations.

§ 68-211-1107.

(a) The department shall develop management standards for used electronic device collection and recycling. Such standards shall comply with all rules and regulations of the federal environmental protection agency but shall not exceed such rules and regulations. In developing management standards, the department shall consult with representatives of manufacturers, retailers, and recyclers of electronic devices, and waste management professionals, environmental groups, consumer groups, and other appropriate organizations.

(b) The department is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, codified in title 4, chapter 5.

§ 68-211-1108.

(a) There is levied on every retail sale of an electronic device a fee of ten dollars (\$10.00) to fund the electronic waste recycling fund.

(b) The fee shall apply only to sales of electronic devices, as defined in § 68-211-1102.

(c) The fee established in this part shall be collected by the department of revenue and deposited to the electronic waste recycling fund.

(d) The commissioner of revenue is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, codified in title 4, chapter 5.

§ 68-211-1109.

(a) The fee on the sale of electronic devices shall not be imposed on electronic devices exported from this state or on electronic devices sold by a manufacturer to a wholesaler or retailer who certifies to the manufacturer, in accordance with subsection (b), that the electronic device will be exported from this state by the wholesaler or retailer.

(b) The certification required in this section shall be in writing, and shall include an acknowledgement on the part of the person giving certification that such person shall be liable to the department of revenue for the fee imposed under § 68-211-1108, if the electronic device is not sold in an exempt manner. When a wholesaler or retailer certifies that the electronic device is exempt from the fee on the basis of a subsequent resale to a person who will export the electronic device, the wholesaler or retailer must also obtain a certification from the purchaser that the electronic device will be exported.

(c) Good faith acceptance of a certification by a manufacturer, wholesaler, or retailer shall relieve the manufacturer, wholesaler or retailer from any liability to the department of revenue for the fee otherwise applicable under § 68-211-1108. If a person certifies that the electronic device will be sold in an exempt manner, and the electronic device is subsequently resold in a manner that does not qualify as exempt, the person making the resale shall be liable to the department of revenue for the fee. § 68-211-1110.

(a) The fee imposed by this part shall be payable for quarterly periods as follows:

- (1) January 1 through March 31;
- (2) April 1 through June 30;
- (3) July 1 through September 30; and
- (4) October 1 through December 31.

(b) It is the duty of all retailers of electronic devices on or before the twenty-fifth day of the month following the close of the periods set out above to transmit to the commissioner of revenue, upon forms prescribed and furnished by such commissioner, returns showing such information as such commissioner considers pertinent to the

administration of this part. A separate return shall be filed for each separate location or business.

(c) The return shall be accompanied by payment of all fees due.

(d) Failure to file a return or pay the fee due under this part prior to the date provided by this section shall cause the fee to become delinquent and subject to interest and penalty as provided in title 67, chapter 1, part 8.

§ 68-211-1111.

For the purposes of compensating the retailer in accounting for and remitting the fee, a retailer shall be allowed a deduction of the fee due, reported and paid to the department of revenue in the amount of two percent (2%) of the amount due on the report. No deduction from the fee shall be allowed if any such report or payment of the fee is delinquent.

§ 68-211-1112.

Any person who:

(1) Fails to comply with any provision of this part or any rule adopted pursuant to this part;

(2) Fails to file any reports, records or documents required pursuant to this part;

(3) Fails, neglects, or refuses to comply with any order issued pursuant to this part; or

(4) Knowingly gives or causes to be given any false information in any reports, records, or documents required pursuant to this part, commits a Class C misdemeanor. Each day such violation continues constitutes a separate offense.

SECTION 2. Tennessee Code Annotated, Section 12-4-109, is amended by adding the following language as a new, appropriately designated subsection:

(e) All contracts for the purchase of computer equipment that contains heavy metals or hazardous materials, including but not limited to personal computers, printers, monitors, central processing units, and scanners, shall include provisions that require

the seller to remove and recycle any unwanted, unusable, or obsolete equipment that is being replaced by such purchase and is not suitable for disposal under § 12-2-403. No such contract shall be awarded that does not warrant that the seller will remove and recycle such equipment, to the greatest extent possible, and assume all liability for proper disposal.

SECTION 3. Tennessee Code Annotated, Section 12-2-403, is amended by adding the following language as a new, appropriately designated subsection:

(h) All departments or agencies that declare computer equipment which is not being replaced by purchase or lease of new equipment and which contains heavy metals or hazardous materials, including but not limited to personal computers, printers, monitors, central processing units, and scanners, to be unwanted, unusable, or obsolete shall seek to recycle such equipment through an electronic waste recycler that will purchase the equipment or recycle the equipment at no cost to the state.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2004, the public welfare requiring it